

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

SHIRLEY V. REMMERT,

Defendant.

No. C 07-80155 CW

ORDER REMANDING  
CASE AND DENYING  
APPLICATION TO  
PROCEED IN FORMA  
PAUPERIS

Defendant Shirley V. Remmert requests leave to proceed in forma pauperis (IFP) pursuant to 28 U.S.C. § 1915(a) to remove a criminal case, People v. Remmert, No. SM 351187A, filed against her in San Mateo County Superior Court. The Court DENIES Defendant's request to proceed in forma pauperis and remands the case to state court.

DISCUSSION

I. Legal Standard

Defendant states in her notice of removal that this case may be removed to this Court on the basis of 42 U.S.C. § 1983, a civil rights statute, joinder of the United States as a necessary party,

1 and federal question jurisdiction.<sup>1</sup>

2 A. In Forma Pauperis

3 The Ninth Circuit has indicated that leave to proceed IFP  
4 pursuant to 28 U.S.C. § 1915(a) is properly granted only when the  
5 plaintiff has demonstrated poverty and has presented a claim that  
6 is not factually or legally frivolous within the definition of  
7 § 1915(e)(2)(B).<sup>2</sup> O'Loughlin v. Doe, 920 F.2d 614, 616 (9th Cir.  
8 1990); Tripati v. First Nat'l Bank & Trust, 821 F.2d 1368, 1370  
9 (9th Cir. 1987).<sup>3</sup> Thus, the court "may deny leave to proceed in  
10 forma pauperis at the outset if it appears from the face of the  
11 proposed complaint that the action is frivolous or without merit."  
12 Id. An in forma pauperis complaint is frivolous if it has "no  
13 arguable basis in fact or law." O'Loughlin, 920 F.2d at 617;  
14 Tripati, 821 F.2d at 1379.

15 Section 1915(e)(2)(B) accords judges the unusual power to  
16 pierce the veil of the complaint's factual allegations and dismiss  
17 those claims where the factual contentions are clearly baseless.  
18 Denton v. Hernandez, 504 U.S. 25, 34 (1992). Because a dismissal

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19 <sup>1</sup> Defendant also cites "FRCP 1444\_."

20 <sup>2</sup> Section 1915(e)(2)(B) states:

21 . . . the court shall dismiss the case at any time if the  
22 court determines that--

23 (B) the action or appeal--  
24 (i) is frivolous or malicious;  
25 (ii) fails to state a claim on which relief may be  
26 granted; or  
27 (iii) seeks monetary relief against a defendant  
28 who is immune from such relief.

<sup>3</sup> Prior to amendment in 1996, § 1915(e)(2)(B) was numbered  
§ 1915(d).

1 pursuant to § 1915(e)(2)(B) is not a dismissal on the merits, but  
2 rather an exercise of the court's discretion under the in forma  
3 pauperis statute, the dismissal does not prejudice the filing of a  
4 paid complaint making the same allegations. Id.

5 B. Removal

6 Title 28 U.S.C. § 1443, which governs removal of criminal  
7 actions, provides:

8 Any of the following civil actions or criminal  
9 prosecutions, commenced in a State court may be removed  
10 by the defendant to the district court of the United  
11 States of the district and division embracing the place  
12 wherein it is pending:

13 (1) Against any person who is denied or cannot  
14 enforce in the courts of such State a right under any  
15 law providing for the equal civil rights of citizens of  
16 the United States, or of all persons within the  
17 jurisdiction thereof;

18 (2) For any act under color of authority derived  
19 from any law providing for equal rights, or for refusing  
20 to do any act on the ground that it would be  
21 inconsistent with such law.

22 Section 1443(1), which grants a right of removal to certain  
23 petitioners who claim federal rights based on racial equality as a  
24 defense to a state prosecution, has been narrowly interpreted by  
25 the United States Supreme Court. California v. Sandoval, 434 F.2d  
26 635, 636 (9th Cir. 1971). Petitions for removal under § 1443(1)  
27 must satisfy two criteria. Id. First, the petitioner must assert,  
28 as a defense to the prosecution, rights arising under a federal  
statute providing for specific civil rights stated in terms of  
racial equality. Id. Second, the petitioner must assert that the  
state courts will not enforce these civil rights and must cite a  
state statute or constitutional provision that purports to command  
the state courts to ignore them. Id. Bad experience with the

1 particular State court in question is insufficient to meet the  
2 § 1443(1) requirements. Id.

3 Section 1443(2) is limited to removal of criminal cases  
4 brought against federal officers and agents. See Alabama v. Kemp,  
5 952 F. Supp. 722, 723 (N.D. Ala. 1997).

6 C. Title 42 U.S.C. § 1983

7 Title 42 U.S.C. § 1983 provides a cause of action for the  
8 "deprivation of any rights, privileges, or immunities secured by  
9 the Constitution and laws" of the United States. 42 U.S.C.  
10 § 1983. Section 1983 is not itself a source of substantive rights,  
11 but merely provides a method for vindicating federal rights  
12 elsewhere conferred. Graham v. Connor, 490 U.S. 386, 393-94  
13 (1989). In order to state a claim under § 1983, plaintiffs must  
14 allege two elements: (1) the violation of a right secured by the  
15 Constitution or laws of the United States, and (2) the alleged  
16 violation was committed by a person acting under the color of state  
17 law. West v. Atkins, 487 U.S. 42, 48 (1988).

18 II. Analysis

19 Title 42 U.S.C. § 1983 is inapplicable to this case because  
20 Defendant is not a plaintiff alleging the violation of a federal  
21 right by a person acting under the color of state law.

22 Defendant has not met either criteria for removal under  
23 § 1443(1). First, Defendant does not state in her notice of  
24 removal that she has asserted, as a defense to prosecution, rights  
25 arising under a federal statute providing for specific civil rights  
26 stated in terms of racial equality. Second, Defendant has not  
27 asserted that the state courts will not enforce these civil rights

1 and has not cited a state statute or constitutional provision that  
2 purports to command the state courts to ignore them. Section  
3 1443(2) also is not applicable here because it is limited to  
4 removal of criminal cases brought against federal officers and  
5 agents, and Defendant has not alleged that she is a federal officer  
6 or agent. See Kemp, 952 F. Supp. at 723. Therefore, this Court  
7 lacks subject matter jurisdiction over Defendant's criminal case  
8 and it must be remanded to state court.

9 CONCLUSION

10 For the foregoing reasons, the Court DENIES Defendant's  
11 request to proceed in forma pauperis to remove her criminal case  
12 and remands the case to state court.

13 IT IS SO ORDERED.

14  
15 Dated: 8/8/07



16 CLAUDIA WILKEN  
17 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA et  
al,

Case Number: CV07-80155 CW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

REMMERT et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 8, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Shirley V. Remmert  
Women's Correctional Center  
San Mateo County Sheriff's Office  
1590 Maple Street  
Redwood City, CA 94063

Dated: August 8, 2007

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California